

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**FORMOSA PLASTICS CORPORATION,
LOUISIANA**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

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Tracking No. HE-PP-99-0715

*** Tracking No. WE-CN-00-0261**

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Tracking No. AE-PP-00-0313

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Tracking No. AE-PP-99-0270

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Tracking No. RE-PP-00-0171

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SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between Formosa Plastics Corporation, Louisiana (Respondent) and the Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, *et seq.*, (the “Act”).

I.

At all times pertinent hereto, Respondent owned and/or operated a chemical plant located on the north end of Gulf States Road in Baton Rouge, Louisiana, in East Baton Rouge Parish, which is permitted to operate under Air Permit Number 0840-00002-10 issued on March 7, 1997, Air Permit Number PSD-LA-560 (M-1) issued March 2, 1995, Air Permit PSD-LA-560 (M-2) issued March 7, 1997 and several other permits. Respondent is authorized to discharge certain quantities and qualities of treated process, utility and sanitary wastewaters and storm water to Monte Sano Bayou and the Mississippi River, both waters of the state, under the terms and conditions of Louisiana Water Discharge Permit System (LWDPS) permit WP0714 issued on January 9, 1990, with an expiration date of January 9, 1995. Respondent submitted a permit renewal application on July 14, 1994, and an updated application on March 14, 1999. On or about May 24, 1996, LWDPS permit

WP0714 was modified to reflect the addition of a new outfall (Outfall 003) for uncontaminated storm water runoff. Respondent was issued National Pollutant Discharge Elimination System (NPDES) permit LA0006149 by the Environmental Protection Agency (EPA) on July 29, 1994, with an expiration date of August 31, 1999. On March 4, 1999, an application for the renewal of LPDES (formerly NPDES) permit LA0006149 was submitted to the Department and is currently under administrative review. The LPDES permit has not been modified to reflect the addition of Outfall 003; however, this outfall is identified in Respondent's 1999 LPDES permit renewal application. Under the terms and conditions of the NPDES permit which has become an LPDES permit, Respondent is authorized to discharge wastewater to the Mississippi River, waters of the state.

II.

Notice of Potential Penalty No. HE-PP-99-0715

On or about August 2, 2000, the Department issued **Notice of Potential Penalty (NOPP) Enforcement Tracking HE-PP-99-0715** for potential violations discovered during an inspection of Respondent's facility conducted on or about October 14, 1999, to determine the degree of compliance with the Act and Hazardous Waste Regulations.

III.

The August 2, 2000, NOPP noted the following potential violations that were identified during the Department's then ongoing investigation:

- A. Respondent failed to implement a monitoring well inspection schedule, maintain the structural and mechanical integrity of all wells, and provide protection from accidental damage and surface infiltration, in violation of LAC 33:V.1509.B, LAC 33:V.3315C, LAC 33:309.A, LAC 33:V.3305.A, and Section VI, Page 31, Paragraph G.3 and Attachment J of the Post Closure Permit, Section IV of Compliance Order HE-C-98-0485, and La. R.S. 30:2025(E)(2).
- B. Respondent failed to adhere to the sampling methods outlined in the permit, in violation of LAC 33:V.3305.C, LAC 33:V.309.A, LAC 3305.A, Section VI, Page 27,

Paragraph C.4.c and d of the Post Closure Permit, Section V of Compliance Order HE-C-98-0485, and La. R.S. 30:2025(E)(2).

- C. Respondent failed to maintain the corrective action system as evidenced by no recovery of contaminated groundwater and off-line recovery wells at the time of the inspection, in violation LAC 33:V.3303.C, LAC 33:V.3305.A, LAC 33:V.309A, LAC 33:V.3321.E, LAC 33:V.3321.F, Section VI.I.1 of the Post Closure Permit, Section VI of Compliance Order HE-C-98-0485, and La. R.S. 30:2025(E)(2).

IV.

Following receipt of the Department's August 2, 2000 NOPP, Respondent met with officials from the Department on several occasions and provided the Department with additional information and documents clarifying certain factual issues. By letter dated July 24, 2001, Respondent submitted a compilation of ten documents which relate to this enforcement action. Additionally, on January 25, 2002, Respondent submitted a report to the Department containing an analysis of the allegations set forth in the NOPP and an analysis of the "Nine Factors" as stated in La. R.S. 30:2025.E. Copies of the July 24, 2001 submittal and the January 25, 2002 "Nine Factors" report are attached hereto in globo as Exhibit 1 and are incorporated herein by reference.

V.

Respondent denies that it committed the violations as alleged, or is liable for any fine, forfeiture or penalty. Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the cash payment and Beneficial Environmental Projects (BEPs) described in Paragraph XXVI below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, through execution of this document, as set forth in this agreement, for the alleged violations set forth in **Notice of Potential Penalty (NOPP) Enforcement Tracking HE-PP-99-0715**. After an examination of the "Nine Factors" pursuant to La. R.S. 30:2025(E)(3), the

Department has determined that considering the significant costs and environmental benefits of the BEPs, the cash payment, BEPs and other projects should be accepted as a full and complete settlement of the claims set forth herein.

VI.

**Consolidated Compliance Order and
Notice of Potential Penalty No. WE-CN-00-0261**

On or about September 22, 2000, the Department issued **Consolidated Compliance Order and Notice of Potential Penalty (CCONOPP) No. WE-CN-00-0261** for various alleged violations of the Act.

VII.

The allegations which form the basis of the enforcement action(s) are:

- A. An inspection by the Department on or about May 14, 1999, revealed that Respondent failed to properly operate and maintain its sewage treatment plant as evidenced by the following:
 - 1. There was a significant amount of floating sludge in the clarifier.
 - 2. There were solids exiting the plant via the clarifier trough.
 - 3. There was an excessive algal buildup in the weir areas which impeded the flow of wastewater over various sections of the weir.
- B. This failure to properly operate and maintain the sewage treatment plant is a violation of LWDPS-permit WP0714 (Part IV, Sections A.1 and B.1), LPDES permit LA0006149 (Part III, Sections A.2 and B.3.a), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.
- C. On or about January 26, 2000, Respondent notified the Department of an unauthorized discharge of approximately 200 gallons of process wastewater from a leaking frac tank through Outfall 003 (LWDPS permit) into the Monte Sano Bayou. This unauthorized discharge of process wastewater is a violation of LPDES permit LA0006149, LWDPS permit WP0714 (Part I, page 4A and Part IV, Section A.1), La. R.S. 30:2076(A)(1)(b), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

D. A multimedia inspection conducted by the Department and EPA Region 6 on or about February 7 through 11, 2000, revealed the following violations:

1. Facility Site Review:

- a) Respondent caused or allowed the unauthorized discharge of process wastewater from a six-inch polyvinyl chloride (PVC) pipe located within the cement wall of the Gulf States Utility (GSU) Substation. Specifically, observation by the inspectors revealed that there was a steady flow of process wastewater draining to the substation area which is listed as an uncontaminated storm water area under Outfall 003. This unauthorized discharge of process wastewater is a violation of LPDES permit LA0006149, LWDPS permit WP0714 (Part I, page 4A and Part IV, Section A.1), La. R.S. 30:2076(A)(1)(b), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, and LAC 33:IX.2355.A.
- b) Observation by the inspectors revealed that there was a large eroded area around Outfall 003 which formed a channel exiting the property.
- c) There were several open barrels without containment scattered throughout the facility that were exposed to the environment.

2. Record Keeping and Reporting:

- a) Observation by the inspectors revealed that on several occasions Respondent failed to record all pertinent data on its Chain-of-Custody forms which included the following: (a) the individual who performed the sampling, (b) the exact place where the sample was collected (i.e. Outfall number), (c) the actual time the sample was collected, (d) the individual who relinquished the sample, (e) the date and time the sample was relinquished, (f) the individual who accepted the sample, and (g) whether any preservatives were used and the type of preservative. This is in violation of LWDPS permit WP0714 (Part IV Sections A.1 and C.5.a), LPDES permit LA0006149 (Part III, Sections A.2, C.5.a and C.5.c), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.I.4, and LAC 33:IX.351.
- b) Respondent failed to record the proper sampling and preservation times. Specifically, the metals logbook indicated that the Respondent's February 10, 1999 sample was collected at 7:10 A.M.; however, the sample preservation time was noted as 7:00 A.M. Additionally, Respondent failed to include the individual who accepted or logged in the metal samples. The failure to record the

proper sampling and preservation times is a violation of LWDPS permit WP0714 (Part IV, Sections A.1 and C.5.a), LPDES permit LA0006149 (Part III, Sections A.2, C.4.a, C.5.a, and C.5.c), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.3.a, LAC 33:IX.2355.J.4, and LAC 33:IX.2531.

- c) Respondent failed to record the laboratory methodologies used to analyze its samples. The methods used for sample analyses must be documented in the laboratory analysis logbook in the event that the logbook is retired. This is a violation of LWDPS permit WP0714 (Part IV, Sections A.1 and C.5.a), LPDES permit LA0006149 (Part III, Sections A.2, C.4.e, and C.5.c), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.3.e, LAC 33:IX.2355.J.4, and LAC 33:IX.2531.
- d) Respondent failed to submit an accurate Discharge Monitoring Report (DMR) for the monitoring period of October 31, 1999, Specifically, Respondent failed to include all of the sample data collected for BOD₅ during the referenced monitoring period in its DMR calculations. Respondent reported a BOD₅ value of 392 lbs./day (average) and 842 lbs./day (maximum). The reported value for BOD₅ should have been 455 lbs./day (average) and 861 lbs./day (maximum). This is a violation of LWDPS permit WP0714 (Part IV, Sections A.1, C.1, and C.8), LPDES permit LA0006149 (Part III, Sections A.2, C.2, and D.5), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.1, and LAC 33:IX.2355.L.4.b.
- e) Respondent failed to record the type of preservatives used to stabilize its samples in the sample analysis logbook. This is in violation of LWDPS permit WP0714 (Part IV, Sections A.1 and C.5a), LPDES permit LA0006149 (Part III, Sections A.2, C.5.a, and C.5.c), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.4, and LAC 33:IX.2531.

3. Flow Measurement:

- a) Respondent failed to properly operate and maintain its flow-measuring device. Specifically, the scale on the staff gauge at Outfall 001 was not readable. This is a violation of LWDPS permit WP0714 (Part IV, Sections A.1 and C.2), LPDES permit LA0006149 (Part III, Sections A.2 and C.6), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

4. Self-Monitoring Program:

- a) The Respondent exceeded the 15 minute holding time allowed for its chlorine samples. This is in violation of LWDPS permit WP0714 (Part IV, Sections A.1 and C.5.a), LPDES permit LA0006149 (Part III, Sections A.2, C.5.a, and C.5.c), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.4, and LAC 33:IX.2531.
- b) Respondent failed to use an approved method to analyze its samples for TSS. Specifically, Respondent failed to follow all of the technical steps outlined in Standard Methods 18th Edition to adequately analyze its samples for TSS. This is in violation of LWDPS permit WP0714 (Part IV, Sections A.1 and C.5.a), LPDES/permit LA0006149 (Part III, Sections A.2, C.5.a, and C.5.c), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.4, and LAC 33:IX.2531.

5. Operation and Maintenance:

- a) Respondent failed to properly operate and maintain its sewage treatment plant as evidenced by the following: (a) only one of the two pumps was operating, (b) there were floating solids and sludge in the clarifier trough, (c) there was no sludge return line when the second pump was supposed to be operating, (d) there were solids and sludge in the clarifier which were exiting the plant over the weirs, and (e) there was a heavy overgrowth on the weirs which impeded the wastewater flow. This is a violation of LWDPS permit WP0714 (Part IV, Sections, A.1 and B.1), LPDES permit LA0006149 (Part III, Sections A.Z and B.3.a), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.

E. Additional inspection conducted by the Department and EPA Region 6 on or about February 7 through 11, 2000, revealed that the Respondent failed to implement an adequate Spill Prevention and Control (SPC) plan. Specifically, the following was noted:

- 1. There were fifty-four 20,000 gallon frac tanks full of process water stored in the reclaimed Bayou Hebert Pond area which is listed as an area of uncontaminated storm water runoff in the LWDPS permit under Outfall 003. Several tanks had no containment.
- 2. There was a large acid tank in the Utilities area which did not have adequate containment to prevent spills or leaks from reaching Outfall 003 (uncontaminated storm water runoff area). Evidence of past spills was noted on the cement driveway directly north of the tank. Furthermore, there were

indications that the spilled material flowed in a northerly direction to the storm water drains located along the perimeter of the Gulf States Utility Substation. At least one of the storm water drains drained onto the ground in the substation area which is listed as an uncontaminated storm water area.

3. There was inadequate berming noted in the railcar loading area along the northern boundary property fence.

The failure to implement an adequate SPC plan is in violation of La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907.E, and LAC 33:IX.907.F.9.

- F. A file review by the Department on or about August 18, 2000, and on or about July 23, 2002, revealed that Respondent caused or allowed the unauthorized discharge of inadequately treated wastewater to waters of the state for the monitoring periods from January 1998 through April 2002. The number of reported effluent violations from Outfall 001A are summarized in the tables attached hereto, in globo, and made a part hereof as Exhibit #2.

The excursions (footnoted as #2) of effluent limitations for the period of January 1998 through April 2000 are in violation of LWDPS permit WP0714 (Part I, page 3, Part II, Paragraph I, and Part III, Section A.1), LPDES permit LA0006149 (Part I, Section A, page 1 and Part III, Section A.2), La. R.S. 30:2076(A)(1), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A. The excursions (footnoted as #3) of effluent limitations for the period of January 1998 through April 2000 are in violation of LWDPS permit WP0714 (Part I, page 3, Part II, Paragraph 1, and Part III, Section A.1), La. R.S. 30:2076(A)(1), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501D, and LAC 33:IX.2355.A.

VIII.

In response to the allegations set forth in the September 22, 2000, CONOPP, Respondent met with officials from the Department on numerous occasions and provided the Department with additional information and documents addressing the allegations set forth in the CONOPP. On November 15, 2000, Respondent submitted an extensive "Nine Factors" report, which was supplemented on March 15, 2001, and again on January 25, 2002. Copies of each of those "Nine Factors" reports and/or supplemental reports are attached hereto in globo as Exhibit 3 and are incorporated herein by reference.

IX.

The Department represents that on or about July 1, 2001, EPA delegated full enforcement authority to the Department for all surface water discharges which form the basis of the enforcement actions addressed herein.

X.

In its January 25, 2002 submission to the Department, Respondent concurred with the Department on an overall settlement value for this enforcement action solely for the purposes of facilitating settlement. However, Respondent maintains that it has not committed the violations as alleged, and is not liable for any fine, forfeiture or penalty. Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the cash payment and Beneficial Environmental Projects (BEPs) described in Paragraph XXVI below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, through execution of this document, as set forth in this agreement, for all allegations set forth in **Consolidated Compliance Order and Notice of Potential Penalty No. WE-CN-00-0261**. After an examination of the “Nine Factors” pursuant to La. R.S. 30:2025(E)(3), the Department has determined that considering the significant costs and environmental benefits of the BEPs, the cash payment and BEPs should be accepted as a full and complete settlement of the claims set forth herein, excepting, however, the allegations of violations in Finding of Fact VI, VIII, and IX.

XI.

Notice of Potential Penalty No. AE-PP-00-0313

On or about October 31, 2000, the Department issued **Notice of Potential Penalty (NOPP) Enforcement Tracking Number AE-PP-00-0313** noting potential violations discovered during an inspection of Respondent's files, conducted on or about May 24, 2000, to determine the degree of compliance with the Act and Air Quality Regulations. The Respondent is subject to the Federal Hazardous Organic NESHAP (HON), 40 CFR Part 63, Subpart H.

XII.

The allegations which form the basis of the enforcement action(s) are:

- A. The Respondent failed to repair five leaking valves in the VCM II unit no later than fifteen (15) calendar days after the leak was detected as required. This is a violation of the Federal Hazardous Organic NESHAP (HON), Subpart H, more specifically, 40 CFR 63.168(f)(1), which language has been adopted as a Louisiana regulation in LAC 33:III.5122. This also constitutes a violation of Specific Condition No. 6 listed in the section entitled EDC\VCM Plants of Air Permit No. 0840-0002-10, letters F and K of the facility's Compliance Schedule (Attachment I to Air Toxics Compliance Plan Number 92060), LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

XIII.

Following receipt of **AE-PP-00-0313**, Respondent met with officials from the Department on several occasions and provided the Department with additional information and documents clarifying certain factual issues. Under cover of letter dated July 24, 2001, Respondent submitted a compilation of documents which show that valve MV-163-RGG was, in fact, properly put on delay of repair, valve MV-11-VL was repaired within 15 days, and valve MV-16-CG was a non-TAP (ethylene) valve. A copy of Respondent's July 24, 2001, submission is attached as part of Exhibit 1 and is incorporated herein by reference.

XIV.

In its January 25, 2002 submission to the Department, Respondent concurred with the Department on an overall settlement value for this enforcement action solely for the purposes of facilitating settlement. However, Respondent maintains that it has not committed the violations as alleged, and is not liable for any fine, forfeiture or penalty.

XV.

Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the cash payment and Beneficial Environmental Projects (BEPs) described in Paragraph XXVI below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, through execution of this document, as set forth in this agreement, for all allegations set forth in **Notice of Potential Penalty No. AE-PP-00-0313**. After an examination of the “Nine Factors” pursuant to La. R.S. 30:2025(E)(3), the Department has determined that considering the significant costs and environmental benefits of the BEPs, the cash payment and BEPs should be accepted as a full and complete settlement of the claims set forth herein.

XVI.

Notice of Potential Penalty No. AE-PP-99-0270

On or about January 23, 2001, the Department issued **Notice of Potential Penalty (NOPP) Enforcement Tracking Number AE-PP-99-0270** noting potential violations discovered during a review of two unauthorized release reports dated August 16, 1999, and October 19, 1999, received from Respondent. The review of the unauthorized release reports was conducted by the Department to determine the degree of compliance with the Act and Air Quality Regulations. The reports state that an unauthorized release occurred on or about August 9, 1999, and on or about October 12, 1999,

at the Respondent's facility. Also, on or about October 5-7, 1999, an inspection of Respondent's facility was performed to determine the facility's degree of compliance with 40 CFR Part 68 - Chemical Accident Prevention Provisions, Subpart D - Program 3 Prevention Program.

XVII.

The January 23, 2001, NOPP noted the following potential violations that were identified during the Department's then ongoing investigation:

- A. Respondent's facility experienced a release of 79 pounds of chlorine and 937 pounds of 1,2-dichloroethane (EDC) to the air on or about August 9, 1999. The incident occurred when two direct chlorination reactors in the VCM I unit area failed. The incident was caused by a cessation of natural gas flow to the reactors, which resulted in a flammable/explosive condition in the reactor vent. The cessation of natural gas flow was a result of human factors. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.905 which states "When facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities, even though the ambient air quality standards in affected areas are not exceeded." Control equipment as defined by LAC 33:III.111 is "any device or contrivance, operating procedure or abatement scheme used to prevent or reduce air pollution." This also constitutes a violation of Sections 2057(A)(1) and 2057(A)(2) of the Louisiana Environmental Quality Act.
- B. Respondent's facility experienced a release of 401 pounds of vinyl chloride monomer (VCM) and 795 pounds of 1,2-dichloroethane (EDC) to the air on or about October 12, 1999. The incident occurred when a control valve was being blocked in for removal and repair. Block valves on either side of the control valve were closed and bleed valves were opened to drain off remaining chemicals in the line. When the operator removed the drain hoses no material was seen coming from the bleed valve and he assumed the line was empty. The bleed valve, however, had been plugged by a buildup of solids in the line. This plug blew out at 12:20 releasing the chemicals still in the line. An operator closed the bleed valve and the leak was stopped. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.905 which states "When facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities, even though the ambient air quality standards in affected areas are not exceeded." Control equipment as defined by LAC 33:III.111 is "any device or contrivance, operating procedure or abatement scheme used to prevent or reduce air pollution." This also constitutes a violation of Sections 2057(A)(1) and 2057(A)(2) of the Louisiana Environmental Quality Act.

- C. Respondent failed to establish a system to promptly address the process hazard analysis (PHA) team's findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. This is a violation of 40 CFR 68.67(e) which language has been adopted as Louisiana regulation in LAC 33:III.5901.A.
- D. Respondent failed to update and revalidate the PHA by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process. This is a violation of 40 CFR 68.67(f) which language has been adopted as a Louisiana regulation in LAC 33:III.5901.A.
- E. Respondent failed to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner. This is a violation of 40 CFR 68.73(c) which language has been adopted as a Louisiana regulation in LAC 33:III.5901.A.
- F. Respondent failed to perform inspections and tests on process equipment. This is a violation of 40 CFR 68.73(d)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5901.A.
- G. Respondent failed to follow recognized and generally accepted good engineering practices for inspection and testing procedures. This is a violation of 40 CFR 68.73(d)(2) which language has been adopted as a Louisiana regulation in LAC 33:III.5901.A.
- H. Respondent failed to ensure the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience. This is a violation of 40 CFR 68.73(d)(3) which language has been adopted as Louisiana regulation in LAC 33:III.5901.A.
- I. Respondent failed to establish and implement procedures to ensure that consideration of the impact of change on safety and health and the authorization requirements for the proposed change are addressed prior to any change. This is a violation of 40 CFR 68.75(b)(2) and 40 CFR 68.75(b)(5) which language has been adopted as a Louisiana regulation in LAC 33:III.5901.A.

XVIII.

In addition to meeting with officials from the Department on several occasions and providing the Department with additional information and documents clarifying certain factual issues, Respondent submitted an extensive “Nine Factors” report addressing this NOPP to the Department on April 17, 2001, which was supplemented on May 14, 2001. As set forth in great detail in the previous “Nine Factors” reports, Respondent maintains that it has not committed the violations as alleged, and is not liable for any fine, forfeiture or penalty. Copies of Respondent’s April 17, 2001 “Nine Factors” report and the May 14, 2001, supplemental report are attached hereto in globo as Exhibit 4 and are incorporated herein by reference.

XIX.

Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the cash payment and Beneficial Environmental Projects (BEPs) described in Paragraph XXVI below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, through execution of this document, as set forth in this agreement, for all allegations set forth in **Notice of Potential Penalty No. AE-PP-99-0270**. After an examination of the “Nine Factors” pursuant to La. R.S. 30:2025(E)(3), the Department has determined that considering the significant costs and environmental benefits of the BEPs, the cash payment and BEPs should be accepted as a full and complete settlement of the claims set forth herein.

XX.

Notice of Potential Penalty No. RE-PP-00-0171

On or about January 30, 2001, the Department issued **Notice of Potential Penalty (NOPP) Enforcement Tracking Number RE-PP-00-0171** noting potential violations discovered during an

inspection of Respondent's facility, conducted on or about May 2, 2000, to determine the degree of compliance with the Act and Radiation Regulations.

XXI.

The January 31, 2001, NOPP noted the following potential violations that were identified during the Department's then ongoing investigation:

- A. Respondent transported and transferred radioactive material without verifying Southern Scrap's Radioactive Materials License. This is a violation of LAC 33:XV.340.C, which states, in part, that before transferring radioactive material to a licensee, the licensee transferring the radioactive material shall verify that the transferee's license authorizes the receipt of the type of radioactive material to be transferred.
- B. Respondent failed to restrict access to a model 5200 100mCi Cs-137 source. Specifically, on March 28, 2000, the sealed source was put in a scrap metal dumpster and transported to Southern Scrap. This is a violation of LAC 33:XV.445, which states, in part, that the licensee shall secure from unauthorized removal or access licensed or registered sources of radiation that are stored in controlled or unrestricted areas.
- C. Respondent delivered the sealed source for transport to an unauthorized carrier. This is a violation of LAC 33:XV.1504, which states, in part, that no person shall deliver radioactive material to a carrier for transport except as authorized in a general or specific license issued by the Division.
- D. Respondent transported the sealed source without complying with proper placarding or transport records required by 49 CFR Parts 170 through 189. This is a violation of LAC 33:XV.1506.A.1, which states, in part, that each licensee who delivers licensed material to a carrier for transport shall comply with the applicable requirements, appropriate to the mode of transport, of DOT in 49 CFR Parts 170 through 189.
- E. Respondent's RSO stated that he gave specific permission to an individual not trained in radiation safety to remove the gauge. This is a violation of Radioactive Material License LA-4042-L01, Condition #4, which states, in part, that only employees trained in radiation safety will be allowed to work with the gauges.

XXII.

After receipt of the January 31, 2001 NOPP, Respondent met with officials from the Department on several occasions and provided the Department with additional information and documents outlining its investigation and response to the allegations. On March 6, 2001, Respondent submitted a “Nine Factors” report addressing this NOPP to the Department. As set forth in the “Nine Factors” report, Respondent maintains there was no release to the environment, that it has not committed the violations as alleged, and that it is not liable for any fine, forfeiture or penalty. A copy of Respondent’s “Nine Factors” report is attached hereto as Exhibit 5 and is incorporated herein by reference.

XXIII.

Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the cash payment and Beneficial Environmental Projects (BEPs) described in Paragraph XXVI below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, through execution of this document, as set forth in this agreement, for all allegations set forth in **Notice of Potential Penalty No. RE-PP-00-0171**. After an examination of the “Nine Factors” pursuant to La. R.S. 30:2025(E)(3), the Department has determined that considering the significant costs and environmental benefits of the BEPs, the cash payment and BEPs should be accepted as a full and complete settlement of the claims set forth herein.

XXIV.

This settlement is being made in the interest of settling the state’s claims and avoiding for both parties the expense and effort involved in litigation or adjudicatory hearings. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set

forth in La. R.S. 30:2025(E) of the Act. Respondent and Department agree that this Settlement shall compromise and settle all Findings of Fact and allegations of violations contained in **Notice of Potential Penalty No. HE-PP-99-0715, Consolidated Compliance Order and Notice of Potential Penalty No. WE-CN-00-0261 (excepting, however, the allegations in Finding of Fact VI, VIII and IX), Notice of Potential Penalty No. AE-PP-00-0313, Notice of Potential Penalty No. AE-PP-99-0270, and Notice of Potential Penalty No. RE-PP-00-0171.**

XXV.

Respondent agrees that the Department may consider the inspection report(s), this Settlement Agreement and attached exhibits for the sole purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action the Respondent and the Department shall be estopped from objecting to the above-referenced documents being considered as proof of the violations alleged herein by the Department for the sole purpose of establishing Respondent's compliance history in any such permitting or enforcement action.

XXVI.

The Department agrees that it will authorize the development of the following BEPs and additional measures pursuant to this settlement agreement and the authority of LAC 33:I.2501, 2503 and 2505 within a time period sufficient to allow Respondent to meet the schedule set forth below:

- A. Respondent proposes a project aimed at reduction of TRI emissions measured from a baseline of 2000 TRI data. This project will consist of installation of technology aimed at reducing TRI emissions by 16% based on 2000 TRI data, exclusive of methanol emissions which occurred during that year, which should result in total projected TRI emissions reduction of four (4) tons from the baseline year. As part of this project, Respondent proposes to undertake an engineering study of emissions within the site in order to determine the specific reduction sources and amounts and submit a report of its findings and proposal to LDEQ within eight (8) months of the effective date of this Agreement. Upon the Department's approval of the specific

components and proposals of the project as detailed in the engineering study, Respondent proposes to complete this project within thirty (30) months after receipt of notice of the Department's approval. Respondent's cost for the engineering study, design, construction and completion of this project is estimated to be approximately Seven Hundred Fifty Thousand and no/100 Dollars (\$750,000.000).

- B. Respondent proposes a project aimed at elimination of its normal use of well water for all operations with the exception of potable water. Respondent proposes to complete this project within twenty-eight (28) months of the effective date of this agreement. Respondent's cost for completing this project is estimated to be approximately One Hundred Thousand and no/100 Dollars (\$100,000.00).
- C. Respondent will contribute Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) to the Louisiana Rural Water Association (LRWA) for the purpose of providing "circuit riders" in each of the nine regions of the state. "Circuit riders" are skilled field technicians holding wastewater certifications that will travel the state providing assistance and guidance to rural and/or small wastewater systems. LRWA is a non-profit organization established in 1978 to assist small water and wastewater systems through training, on-site technical assistance, and state operator certification. The Department regularly calls upon this group to assist facilities that have been issued enforcement actions. Enlarging the group and expanding its ability to service all areas of the state will be a great benefit for local communities and will enhance compliance with water discharge permits. The contribution shall be payable in three (3) installments with the first installment of One Hundred Thousand and no/100 Dollars (\$100,000.00) being due within thirty (30) days of the effective date of this agreement. The second installment of Seventy Five Thousand and no/100 Dollars (\$75,000.00) will be due by March 15, 2003, and the third installment of Seventy Five Thousand and no/100 Dollars (\$75,000.00) will be due by June 15, 2003.
- D. Respondent will contribute Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) to a special trust account set up by the Department to fund projects at sites in the state, selected by the Department, to plug and abandon water wells that may be conduits for contamination to migrate into drinking water aquifers. The contribution will be payable in three (3) installments with the first installment of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) being due within thirty (30) days of the effective date of this agreement. The second installment in the amount of Fifty Thousand Dollars (\$50,000.00) will be due by March 15, 2003, and the third installment in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) will be due by June 15, 2003.
- E. Respondent will make payment of cash in the amount of Three Hundred Thousand and no/100 Dollars (\$300,000.00). Of this total amount, thirteen thousand fifty-four and 90/100 (\$13,054.90) shall be deemed to be reimbursement to the Department for enforcement costs incurred by the Department. The total amount shall be payable in three (3) quarterly installments of One Hundred Thousand and no/100 Dollars

(\$100,000.00) each, all installments being due and payable to the Department by the following dates:

1. January 15 for calendar quarter October 1 through December 31;
2. April 15 for calendar quarter January 1 through March 31;
3. July 15 for calendar quarter April 1 through June 30;
4. October 15 for calendar quarter July 1 through September 30.

The first installment shall be due by the first corresponding calendar date from notice of effective date of the Agreement, and the remaining installments being due on each corresponding quarterly date thereafter. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Department of Environmental Quality, Post Office Box 82231, Baton Rouge, Louisiana, 70884-2231.

XXVII.

Respondent agrees to install a wastewater stripper at VCM #2 to increase the overall facility's groundwater/wastewater processing capacity and to reduce the risk of TOC and EDC exceedances. Respondent agrees to complete this project within thirty-one (31) months from the effective date of this Agreement. Respondent's cost for completing this project is estimated to be approximately Two Million Seven Hundred Thousand and no/100 Dollars (\$2,700,000).

XXVIII.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in East Baton Rouge Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XXIX.

Payment is to be made pursuant to the schedules set forth in Paragraph XXVI. If payment is not timely received, this Agreement is voidable at the option of the Department. Penalties are to be made payable as set forth above in Paragraph XXVI.

XXX.

Respondent hereby agrees to undertake, and the Department agrees to accept the following administrative provision, actions and schedule for compliance:

- A. The Respondent shall submit quarterly progress reports no later than thirty (30) days after the end of each calendar quarter after the effective date of this agreement. Each such quarterly report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report.
- B. The Respondent shall submit a final report to the Department within sixty (60) days of completion of the BEPs described in Paragraph XXVI. The final report shall include a summary of all the information previously submitted and a total amount spent on the projects listed in Paragraph XXVI. It shall also contain a certification that the projects were completed as described.
- C. If Respondent does not spend the amount of One Million Three Hundred Fifty Thousand and no/100 (\$1,350,000) Dollars for the BEPs designated in Paragraph XXVI (A through D) above and Two Million Seven Hundred Thousand and no/100 (\$2,700,000) Dollars for the wastewater stripper project designated in Paragraph XXVII above, then it shall, in its final report, propose additional projects for the Department's approval in an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent; or, at Respondent's option, pay to the Department the equivalent amount in cash.
- D. Respondent will submit to the Department a Work Plan by November 1, 2002, or within sixty (60) days after the effective date of this Settlement Agreement, whichever occurs sooner. The Work Plan will meet the format requirements of Appendix B Sections B.2.4 and B.2.5 of the RECAP program and will include provisions to address the following:
 - 1. Identification of the horizontal and vertical extent of contaminant impact.

2. The installation of two (2) wells as replacements for well PW-16. One well will be screened to monitor the “400-foot sand,” and the other well will be screened to monitor the “600-foot sand.”
 3. A monitoring well network designed to detect and delineate the extent of contamination in all impacted zones in the Bayou Hebert Pond area.
 4. The Work Plan will address measures to evaluate the consistently high pH reading of groundwater from monitoring wells MW-20 and MW-21.
 5. A schedule for additional activities including the submission of an investigation report, a Corrective Measures Study Report, a Corrective Action Plan, and a schedule for implementation of the Corrective Action Plan.
- E. Respondent will submit to the Department, within ninety (90) calendar days of the effective date of this Settlement Agreement, the following:
1. A site map depicting the locations of all active and abandoned water supply wells and water supply test holes. This map will include plant coordinates and monitoring and recovery wells and will be at a scale of one inch is equal to one hundred feet.
 2. All available driller’s logs for the referenced test holes and the drillers’ logs, electric logs, construction details, and plugging and abandonment and reworking records for all water supply wells.
- F. Respondent shall submit monthly progress reports regarding ground water corrective actions until such time as approval to modify this requirement is received in writing from the Department.
- G. Respondent will submit to the Department an application to modify its existing Post Closure Permit within ninety (90) days after the Department’s approval of the Corrective Action Plan. Respondent shall, until a final decision by the Department on the Post Closure Permit modification application, continue to operate its groundwater monitoring/recovery system in the present manner and in its present configuration. Such operation shall be considered compliance with the Act.
- H. The Department agrees to allow potable water well DW-4, which is listed in the existing Post Closure Permit as a potable water well with sampling requirements, to be substituted by DW-5, which is the existing potable water well in service.
- I. This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La.R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms

of this agreement. Respondent expressly reserves, however, the right to administrative or judicial review of the actions of the Department acting upon, interpreting and/or applying the terms of this agreement.

XXXI.

Anything to the contrary set forth herein notwithstanding, Respondent's time for achieving compliance under this Settlement Agreement shall be extended if, but only if, and only to the extent that, such delay relates directly to the inability to complete a stage or phase timely and such delay is caused by acts of God, inclement weather, strikes, labor disputes, fire, flood, explosion, riot, war, sabotage or inability to obtain required governmental and/or regulatory agency approval, provided that the inability is in no way due to Respondent's failure to timely and adequately apply for such approval and/or provide information to the governmental authority. Failure of Respondent to perform its obligations timely shall not be excused if it is contributed to or caused by Respondent's failure (whether beyond its control or not) to make contracts for any required materials and services.

XXXII.

In the event of an excusable delay, Respondent shall notify the Department orally within five (5) working days, and in writing within ten (10) working days, after any event it contends constitutes an excusable delay as defined above. Such written notice shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. If the Department agrees that the delay in question is excusable, the Department shall stipulate to an extension of the particular performance date. Unanticipated or increased costs or expenses associated with the performance of Respondent's obligations under this Settlement and changed

financial circumstances shall not, in any event, constitute circumstances beyond its control or excusable delay, or serve as a basis for an extension of time under this paragraph.

XXXIII.

For and in consideration of the covenants made by Respondent as set forth hereinabove, the Department agrees to undertake and to do the following:

- A. The Department agrees to accept the sum of Three Hundred Thousand and no/100 Dollars (\$300,000.00), which, along with the other covenants, including the projects and BEPs to be completed by Respondent as described herein, shall constitute full payment, satisfaction and compromise of and from any and all claims, demands, actions, damages, penalties, attorneys fees and costs as set forth hereinabove.
- B. The Department consents not to initiate or maintain any administrative enforcement action, lawsuit, penalty, order, claim, permit revocation, permit modification, adjudicatory hearing, or injunctive relief against Respondent with respect to the matters resolved and settled herein.
- C. In consideration of the above, any and all claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XXXIV.

This Settlement Agreement is to be governed by Louisiana law and shall be effective upon the last date signed by any party to the Agreement. The last signatory shall promptly provide a signed copy to the other parties, by U.S. mail, after executing the Agreement.

XXXV.

The provisions of this Settlement Agreement are severable. In the event any section, paragraph, clause, provision or condition of the Settlement Agreement is declared unenforceable, all other sections, paragraphs, clauses, provisions or other conditions not affected shall remain in force and effect.

WITNESSES:

FORMOSA PLASTICS, LOUISIANA

BY: _____

NAME: _____

TITLE: _____

THUS DONE AND SIGNED before me this ____ day of _____, 2002, in

_____.

NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA
Hall Bohlinger, Secretary
Louisiana Dept. of Environmental Quality

BY: _____

R. Bruce Hammatt
Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED before me this ____ day of _____, 2002, in Baton

Rouge, Louisiana.

NOTARY PUBLIC

Approved: _____


R. Bruce Hammatt, Assistant Secretary

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Formosa Plastics Corporation, Louisiana

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

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Tracking No. HE-PP-99-0715

Tracking No. WE-CN-00-0261

Tracking No. AE-PP-00-0313

Tracking No. AE-PP-99-0270

Tracking No. RE-PP-00-0171

This Settlement Agreement has been reviewed, and is concurred in, by the Attorney General,
under the provisions of La. R.S. 30:2050.7.

RICHARD P. IEYOUB
ATTORNEY GENERAL

DATED: _____

BY: _____
ASSISTANT ATTORNEY GENERAL